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UNITED STATES FIRE INSURANCE COMPANY  
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10 IN THE UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 (OAKLAND DIVISION)  
13

14 LENSRAFTERS, INC.; and EYEXAM  
OF CALIFORNIA, INC.;

15 Plaintiffs,  
16

17 vs.

18 LIBERTY MUTUAL FIRE INSURANCE  
COMPANY; EXECUTIVE RISK  
19 SPECIALTY INSURANCE COMPANY;  
UNITED STATES FIRE INSURANCE  
20 COMPANY; MARKEL AMERICAN  
INSURANCE COMPANY; and  
21 WESTCHESTER FIRE INSURANCE  
COMPANY,

22 Defendants.  
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Case No. C-07-2853 SBA  
The Honorable Sandra B. Armstrong

**E-FILING**

**[PROPOSED] ORDER GRANTING UNITED  
STATES FIRE INSURANCE COMPANY'S  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, STAY ACTION IN  
FAVOR OF PRIOR-PENDING NEW YORK  
STATE COURT ACTION**

Date: September 11, 2007  
Time: 1:00 p.m.  
Courtroom: 3

1 Defendant United States Fire Insurance Company's ("U.S. Fire") Motion to Dismiss or,  
2 Alternatively, Stay Action in Favor of Prior-Pending New York State Court Action came on for  
3 hearing before this Court on Tuesday, September 11, 2007 at 1:00 p.m.

4 The Court, having considered all of the papers submitted in connection with the motion  
5 and having heard the argument of counsel, determines that the state law issues raised in this  
6 federal declaratory relief action are already being adjudicated in the parallel state court action  
7 filed by U.S. Fire in New York State. Accordingly, under *Wilton v. Seven Falls Co.*, 515 U.S.  
8 277, 287-89 (1995), *Brillhart v. Excess Insurance Company of America*, 316 U.S. 491, 494  
9 (1942), and *Continental Casualty Company v. Robsac Industries*, 947 F.2d 1367, 1370 (9th Cir.  
10 1991), this Court declines the invitation to exercise its permissive jurisdiction over the declaratory  
11 relief claims asserted in this action. 28 U.S.C. § 2201(a) (2007) (providing that a district court  
12 "may declare the rights and other legal relations of any interested party seeking such  
13 declaration"). This Court hereby **GRANTS** U.S. Fire's motion and dismisses this action in favor  
14 of the prior-pending New York State Court Action.

15  
16 **IT IS SO ORDERED.**

17  
18 DATED: \_\_\_\_\_

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The Honorable Sandra B. Armstrong